

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of	§	
	§	
Implementation of Section 621(a)(1)	§	MB Docket No. 05-311
of the Cable Communications Policy	§	
Act of 1984 as amended by the Cable	§	
Television Consumer Protection and	§	
Competition Act of 1992		

Comments of the Public Utility Commission of Texas

The Public Utility Commission of Texas (Texas PUC), having regulatory authority over public utilities within our jurisdiction in Texas, respectfully submits these comments in response to the *Notice of Proposed Rulemaking (NPRM)* issued by the Federal Communications Commission (Commission) in the above-captioned proceedings.

In this *NPRM*, the Commission requests input regarding the current ability of potential competitors to the incumbent providers of multichannel video programming (generally over-the-air broadcast television, a cable service, and at least two DBS providers)¹ to obtain franchises.² A specific issue upon which the Commission seeks comment is “the impact that state laws have on the ability of new entrants to obtain competitive franchises.”³

The Texas 79th Legislature, 2nd Special Session, recently passed legislation that provides for state-issued cable and video franchising.⁴ This state-issued

¹ In re: Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992, MB Docket No. 05-311, FCC 05-189, Notice of Proposed Rulemaking at ¶ 1 (rel. December 14, 2005) (*NPRM*).

² *Id.* at ¶¶ 12-14.

³ *Id.* at ¶ 14.

⁴ Act of Aug. 16, 2005, 79th Leg., 2nd C.S., S.B. 5, § 27 (codified as TEX. UTIL. CODE ANN. §§ 66.001-.017 (Vernon 1998 & Supp. 2005)).

franchising allows cable and video providers to apply, via a state-wide application, for authority to provide cable and/or video service in one or more municipalities. This legislation was codified into the Texas Public Utility Regulatory Act (PURA, of which Chapter 66 is included in these comments as Attachment A).⁵ Specifically, PURA now designates the Texas PUC as “the franchising authority for a state-issued franchise for the provision of cable service or video service”⁶ and directs eligible competitors seeking to provide cable or video service in Texas to file an application for a State-Issued Certificate of Franchise Authority (SICFA) with the Texas PUC.⁷

The Texas PUC is directed by PURA to issue a certificate of franchise authority to offer cable service or video service before the 17th business day after receipt of the completed application.⁸ In the current SICFA Application (Attachment B, and on the Texas PUC web site, http://www.puc.state.tx.us/cable/forms/catv/catv_app.pdf), the applicant provides such information as its contact information and corporate officers, affirmations that it will meet Federal, Texas and municipal regulations, and a detailed description of the requested Service Area Footprint (SAF). If the application is complete and the applicant is eligible and in good standing with the Secretary of State and the State Comptroller, the application is recommended for approval. The Texas PUC is currently engaged in rulemaking concerning its state-issued cable and video franchise process, and as of January 18, 2006, had received 19 SICFA applications, of which 13 had been approved and six were pending. The Texas PUC has so far taken an average of 16 business days to grant an SICFA. A list of these applications is included in these comments as Attachment C.

⁵ Public Utility Regulatory Act, Tex. Util. Code Ann. §§ 66.001-.017 (Vernon 1998 & Supp. 2005) (PURA).

⁶ PURA § 66.001.

⁷ *Id.* at § 66.003.

⁸ *Id.* at § 66.003(b).

In that this *NPRM* includes contemplation of the modification of the franchising authority of local entities, the Texas PUC suggests that the potential effect of such modification on customer care and enforcement also be considered. Should customer care and enforcement authority be taken from local entities, this authority would pass to either the states or to the Commission. Some states may well forgo such authority, and in that case customer care and enforcement authority should pass to the Commission. The Texas PUC is currently evaluating how, and by whom, customer care and enforcement under this new state franchising system would be handled.

In closing, the Texas PUC appreciates the opportunity to provide initial comments to the Commission in this proceeding. The Texas PUC believes that it is important to highlight the current activities taking place at the state level, and to urge the Commission to consider these new state rules when considering the role that states should play in implementing video service franchising.

Respectfully submitted,

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February 13, 2006

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Commissioner

Paul Hudson
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